

Chapter 3-143 Competitive Purchase of Service Summary of Proposed Changes

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Public Notice

- Increases public notice from 21 days to 28 days to allow for maximum competition and additional time to submit proposals; amends public notice requirement from newspaper to posting on the Internet (see amendments to 3-141, HAR).

Availability of Requests for Proposals

- Adds the administrator may require that RFPs be made available on a central website to increase public access. This will also result in savings in time and expense to applicants and the state.

Evaluation of Proposals

- Adds language to clarify that, when utilizing numerical scoring, written explanation of scores given shall be included.

Addenda to RFPs

- Amends language to clarify that addenda may be issued prior to request for final revised proposals for the purposes of clarification of the RFP.

Electronic Submission of proposals

- Amends language to allow electronic submission via website in addition to e-mail.
- Amends time of receipt from transmission to actual receipt for clarity as the accuracy of time of transmission may vary depending on the device used for transmission.

Secondary Purchase

- Amends maximum allowed amount for After-the-Fact Secondary Purchases from 30%, to a maximum of 30% not to exceed \$75,000 to set reasonable limits for the maximum amount of a contract.

Joint Requests for Proposals

- Adds procedure for joint request for proposals issued by two or more purchasing agencies to coordinate and improve the efficiency of the purchase of health and human services.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 143

COMPETITIVE PURCHASE OF SERVICE

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SUBCHAPTER 1

PURPOSE AND SCOPE

§3-143-101 Purpose. The purpose of this chapter is to implement section 103F-402, HRS, which establishes the competitive purchase of service method of procurement, by providing rules and procedures for the use of this method of procurement.

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§3-143-102 Scope. The competitive purchase of service method of procurement may be used for any purchase of health and human services governed by chapter 103F, HRS.

SUBCHAPTER 2

CORE PROCEDURES

§3-143-201 Preparing a request for proposals.

(a) The request for proposals is used to initiate a competitive purchase of service procurement and shall include:

- (1) The service specifications prepared in accordance with section 3-143-302 for the services to be procured;
- (2) All applicable general and special conditions and tax clearance requirements that will be imposed on the successful applicant by contract;
- (3) A statement indicating that the award of a contract and any allowed renewal or extension will be subject to the availability of appropriated funds;
- (4) Instructions and information for applicants including but not limited to the time and place for the orientation for the request for proposals, the submittal deadline, and the place where proposals must be submitted;
- (5) Planning activities utilized in accordance with section 3-142-301;
- (6) Specific criteria to be used in evaluation of proposals that shall include the following:
 - (A) Technical capability and approach for meeting performance requirements;
 - (B) Competitiveness and reasonableness of unit of service;

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- (C) Managerial capabilities;
- (D) Cost, or, if applicable, cost per unit of service; and
- (E) Any additional criteria determined to be useful by the purchasing agency;
- (7) A statement of the relative priority of the various evaluation criteria;
- (8) A statement regarding any secondary purchasers participating in the request for proposals as provided in section 3-143-608;
- (9) A statement regarding the allowability of multiple or alternate proposals as provided in section 3-143-605;
- (10) A statement that provider participation in a purchasing agency's efforts to plan for or to purchase health and human services, prior to the purchasing agency's release of a request for proposals including the sharing of information on community needs, best practices, and providers' resources, shall not disqualify providers from submitting proposals if conducted in accordance with sections 3-142-203 or 3-143-618;
- (11) The criteria by which the performance under the contract will be monitored and evaluated;
- (12) Any specific requirements or qualifications that an applicant must meet in order to submit a proposal including, but not limited to, licensure or accreditation;
- (13) A statement that upon request from the purchasing agency, each applicant shall submit any additional materials and documentation reasonably required by the purchasing agency in its evaluation of the proposals; and

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- (14) Any other statement, disclaimer, or waiver required by law.

§3-143-202 Public notice of requests for proposals. (a) Public notice of requests for proposals shall be made to encourage competition among providers so that the state obtains the most advantageous proposal or proposals that the market can support. Public notice shall be made in accordance with section 3-141-406.

~~[(b) Required contents of public notice. Public notice of requests for proposals shall include the following information:~~

- ~~(1) A brief description of the service desired;~~
- ~~(2) When and where copies of the request for proposals will be available;~~
- ~~(3) The submittal deadline for proposals in response to the request for proposals; and~~
- ~~(4) The time and place for the orientation, [if any,] for the request for proposals.]~~

(c) Additional contents of public notice. In addition to the items required ~~[under subsection (b)]~~, in accordance with section 3-141-406 public notice of requests for proposals may include any other information a purchasing agency deems appropriate, such as copying fees charged for copies of the request for proposals.

(d) Required [newspaper] publication. Public notice of the request for proposals shall be published ~~[at least once in a newspaper of general circulation within the state, and, to the extent practicable, at least once in a newspaper of local circulation within the island in which the requested health and human services are to be provided.]~~ in accordance with section 3-141-406. The date ~~[of the last newspaper publication]~~ the notice is first published shall be at least ~~[twenty-one calendar]~~ twenty-eight days before the submittal deadline for proposals responding to the

request for proposals. The notice shall remain on the website until the proposal submittal deadline.

(e) Additional media for publication authorized. In addition to the required ~~[newspaper]~~ internet publication, copies of the public notice may be given in any manner deemed reasonably likely to promote competition among providers, ~~[including but not limited to the following]~~ as provided in section 3-141-406(d):

- ~~[(1) Further publication of notice in newspapers of general or local publication;~~
- ~~(2) Telephone calls, United States mail, telefacsimile transmission, or electronic mail to potential applicants on a provider list compiled in accordance with section 3-141-401; or~~
- ~~(3) Publication by any public or private telecommunication information network.]~~

(f) Shortening of time for [newspaper] internet publication. The chief procurement officer or head of the purchasing agency may shorten the ~~[twenty-one]~~ twenty-eight day period required between ~~[newspaper]~~ the first internet publication and submittal deadline imposed in subsection (c) above upon a written determination that:

- (1) Adequate competition will be possible in spite of the shorter time period; and
- (2) The shorter time period will allow potential applicants a reasonable time to prepare their proposals.

(g) Public inspection of request for proposals. A copy of the request for proposals shall be made available for public inspection at the offices of the head of the purchasing agency or procurement officer issuing the request for proposals. The administrator may require that requests for proposals be made available on a central website.

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§3-143-203 Orientation for requests for proposals. (a) In order to provide greater efficiency and uniformity in the planning and procurement of health and human services, orientations to explain the procurement requirements of the purchasing agency shall be conducted by the purchasing agencies for all requests for proposals issued.

(b) Notice of orientation. An orientation for a request for proposals shall be conducted after the request for proposals is issued. The notice of the orientation shall be given in the request for proposals.

(c) Time for orientation. The orientation shall be held between five and fifteen working days after the public notice has been issued, or long enough after the request for proposals has been issued in order to allow applicants to become familiar with the request for proposals, but sufficiently before proposal deadline to allow consideration of the orientation results in preparing their proposals.

(d) Place for orientation. An orientation shall be conducted on the island on which the requested service will be provided. If a request for proposals requests services to be provided on multiple islands, then the purchasing agency shall hold its orientation on the island that will receive the largest share of the requested services at the location or locations specified in the request for proposals.

(e) No implied amendment of request for proposals. No statement or clarification made by the purchasing agency at the orientation shall be construed as an amendment to the request for proposals unless a written addendum is published in accordance with section 3-143-301. Regardless of whether an addendum is issued or not, a summary of any substantive matters raised at the orientation shall be supplied to all those prospective applicants known to have received a request for proposals.

(f) Waiver from orientation. The chief procurement officer may waive the requirements of this section for good cause. Any waiver issued under this subsection shall be in writing, and shall state the

circumstances that justify good cause for the waiver. Circumstances constituting good cause include, but are not limited to the following:

- (1) A written finding, certified by the head of the purchasing agency, that the request for proposals issued is substantially similar to other requests for proposals for the same services issued by the purchasing agency in the past, and potential applicants are already familiar with the requirements of the request for proposals for that reason;
- (2) The total value of the services being procured is less than \$50,000.00; or
- (3) Any other circumstance in which the costs of holding the orientation outweigh the benefits to be obtained from holding the orientation.

§3-143-204 Submission and receipt of proposals.

(a) Proposals shall be submitted to purchasing agencies no later than the submittal deadline. Proposals may be submitted by hand-delivery or United States mail. Proposals submitted by hand-delivery shall be deemed to have been received when actually delivered, and proposals submitted and received by United States mail shall be deemed to have been received on the date they are post-marked rather than the date they are actually received.

(b) Procedure for receiving documents. Unless an alternate procedure is proposed by a purchasing agency and approved by its chief procurement officer, proposals, modifications to proposals, and withdrawals of proposals shall be received according to the procedure in this subsection. Upon receipt of proposals by a purchasing agency at a designated location, proposals, modifications to proposals, and withdrawals of proposals shall be date-stamped and, when possible, time-stamped. In addition to such time- and date-stamping, purchasing agencies may issue

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receipts to applicants. All documents so received shall be held in a secure place by the purchasing agency and not examined for evaluation purposes until the submittal deadline.

§3-143-205 Evaluation of proposals. (a) After the submittal deadline, all proposals, modifications, and withdrawals shall be examined by the purchasing agencies in accordance with this section.

(b) Evaluators. The procurement officer, or an evaluation committee of designated reviewers selected by the head of the purchasing agency or procurement officer shall review and evaluate proposals. A copy of the document identifying any review committee members and any subsequent changes thereto shall be placed in the procurement file.

(c) Appointment of committee. When an evaluation committee is utilized, the head of the purchasing agency or procurement officer shall select for each request for proposals a minimum of two employees from a state agency or agencies with sufficient education and training to evaluate the proposals received in response to the request for proposals. Non-state employees may serve as advisors to purchasing agencies in the evaluation of proposals but shall not represent or act on behalf of a purchasing agency in any selection or award. A non-state employee shall not be permitted to serve as an advisor if such service would pose an actual or potential conflict of interest.

(d) Preparation of evaluators. If the purchasing agency deems it necessary or advisable, the evaluators may meet with other state agency personnel in advance of the formal evaluation process in order to discuss a request for proposals, the evaluation process, the evaluation criteria and their relative priorities, or other issues relevant to the evaluation or the request for proposals.

(e) Procedure for evaluation. The evaluation of proposals shall be based solely upon the evaluation criteria and their relative priorities as established

in the request for proposals. A written evaluation shall be made for each proposal based on either written comments or a numerical rating system. Numerical evaluations shall include a written explanation of scores given. After the award and execution of a contract or contracts in the case of multiple awards is awarded and executed, the written evaluations for all proposals received shall be made available for public inspection in the procurement file.

(f) Ranking of proposals. After all of the proposals have been evaluated, the proposals shall be ranked from most advantageous to least advantageous, based on the evaluations each proposal received.

(g) Forbidden criteria for evaluation. Evaluations shall not be based on race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, physical or mental disability, political affiliation of the applicant, or any other criterion prohibited by law, unless such criterion is permitted by law.

§3-143-206 Award of contract. (a) Under a competitive purchase of services, the purchasing agency may either award a single contract to the applicant that submitted the proposal ranked most advantageous under the evaluation process, or make a multiple award contract as provided in this section.

(b) Multiple award contract defined. A multiple award contract is an award of multiple contracts to a number of providers that will, as an aggregate, provide the services required in the request for proposals.

(c) Reference to multiple award contract in request for proposals. If a multiple award is anticipated prior to issuing a request for proposals or solicitation, the purchasing agency shall reserve the right to make the award and the criteria for multiple awards shall be stated in the request for proposals.

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(d) Conditions for multiple award contract. A multiple award contract may be made whenever the purchasing agency deems that it is in the best interests of the state. Only the providers whose proposals that were evaluated as the most advantageous over-all, by geographical area, or by other criterion explained in the request for proposals, shall be considered for multiple award contracts. If, for example, a multiple award contract is to be made to two providers, then only the providers with the two highest-ranked proposals may be considered, and so on.

(e) Forbidden justifications for multiple award contracts. Multiple award contracts shall not be made for any of the following reasons:

- (1) When a single award will meet the purchasing agency's needs without sacrifice of economy or service; or
- (2) Any reason in frustration of these rules, or chapter 103F, HRS.

(f) Modifications before execution. Before the execution of a contract, the purchasing agency may seek to make final modifications to a proposal through discussion, as provided under section 3-143-404, or through a partial rejection, as provided under section 3-143-611.

(g) Notice of award. Notice of the award of a contract or contracts under this section shall be given to all applicants by United States mail.

SUBCHAPTER 3

CONTENT REQUIREMENTS

§3-143-301 Addenda to requests for proposals.

(a) Amendments, corrections, and clarifications to requests for proposals shall be made by addendum, and may be made at any time prior to the submittal deadline. Addenda may also be made prior to final revised proposals pursuant to section 3-143-301(f).

(b) Form of addenda and procedure for distribution. Every addendum shall reference the portions of the original request for proposals that it amends, and shall set forth in full all amendments, corrections, and clarifications to the request for proposals. Addenda shall be issued to all prospective applicants known to have received a request for proposals, and may require that prospective applicants acknowledge receipt of the addendum issued.

(c) Permitted uses of addenda. Addenda may be used for any reasonable purpose in furtherance of the procurement process, including but not limited to:

- (1) Making changes in the terms of the request for proposals, including but not limited to changes in quantity, service description, timeline, scope of service, or proposal deadline;
- (2) Correcting mistakes or resolving ambiguities;
- (3) Insuring that all applicants receive material information that may have arisen during the course of discussions of the request for proposals; and
- (4) Providing any other information or clarification to the request for proposals that will promote fair competition among applicants.

(d) Time for distribution. Addenda shall be distributed at least ten working days before the submittal deadline, or within a sufficient time before the submittal deadline to allow prospective applicants to consider them in preparing their proposals. If the submittal deadline for the request for proposals will not permit such adequate time, the purchasing agency shall include in the addendum an amendment to extend the submittal deadline accordingly. In order to allow adequate time, the purchasing agency may also include in the addendum amendments to allow telefacsimile or electronic ~~mail~~ submission of proposals.

(e) Method for distribution. Purchasing agencies shall distribute addenda to prospective applicants via

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telefacsimile or hand-delivery to the extent practicable, or by United States mail.

(f) Addenda issued after the submittal deadline and prior to request for final revised proposal. Addenda may be issued after the submittal deadline and prior to the submittal deadline for final revised proposals for the purposes of clarification, correction and to make modifications that do not constitute a material change to the request for proposals as defined in section 3-143-403(e). Addenda shall be distributed to all applicants who submitted a proposal. The time for distribution shall be at least five working days or within a sufficient time before the submittal deadline for final revised proposals to allow prospective applicants to consider them in preparing their final revised proposals. The methods of distribution shall be in accordance with section 3-143-301(e).

§3-143-302 Service specifications for requests for proposals. (a) In order to promote uniformity in the field of health and human service procurement, service specifications contained in requests for proposals shall be written in accordance with this section.

(b) Contents of service specifications. Service specifications shall address each of the following items with either an explanation or a statement that the item is not applicable to the request for proposals:

- (1) Identify minimum or mandatory activities;
- (2) Specify probable funding amounts, source, and period of availability;
- (3) Describe the need or problem the service addresses;
- (4) Describe goals of the service;
- (5) Describe in detail the target population to be served;
- (6) Specify the geographical coverage of service;

- (7) Specify expected outcome measurements;
- (8) Specify the units of service and unit rate, as applicable;
- (9) Specify quality assurance and evaluation specifications, as applicable;
- (10) Specify whether single or multiple contracts are to be awarded;
- (11) Specify whether single- or multi-term contracts are to be awarded;
- (12) Specify reporting requirements for program and fiscal data, and provide sample forms and instructions, as available or appropriate;
- (13) Identify minimum or mandatory administrative requirements;
- (14) Identify minimum or mandatory personnel requirements; and
- (15) Specify pricing or pricing methodology to be used, as applicable.

(c) Contracts data base. In order to enhance efficiency and planning in the field of health and human services procurement, the administrator may compile service specifications generated under this section for inclusion in the contracts data base.

§3-143-303 Notice of award. (a) Each notice of award issued pursuant to section 3-143-206 shall contain a statement of findings and decision that includes the following information:

- (1) Identification of the purchasing agency;
- (2) Identification of the request for proposals;
- (3) Identification of the applicant or applicants that were selected;
- (4) If applicable, a brief statement of the reasons supporting the decision for the non-award to the applicant; and

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- (5) A copy of the applicant's proposal evaluation worksheet to whom the notice is being sent.

(b) Distribution of notice. A copy of the notice shall be provided to each applicant by the purchasing agency upon completion of the evaluation of competitive purchase of service proposals in accordance with this section.

SUBCHAPTER 4

ALLOWABLE COMMUNICATIONS

§3-143-401 Discussions with applicants allowed before submittal deadline. (a) Before the submittal deadline, a purchasing agency may engage in discussions with applicants as provided in this section as often as the purchasing agency deems necessary or convenient.

(b) Purpose of discussions. Discussions may be conducted under this section in order to promote understanding of a purchasing agency's requirements.

(c) Procedure for conducting discussions. The purchasing agencies shall establish procedures and schedules for conducting material discussions under this section that will insure the reasonably fair and equal treatment of all prospective applicants.

(d) Modification or cancellation of request for proposals for material change. In response to matters raised during discussions conducted under this section, a purchasing agency may modify or cancel its request for proposals as provided herein.

- (1) If a proposed modification does not constitute a material change in the nature of the request for proposals, then the purchasing agency may issue a written addendum in accordance with section 3-143-301.
- (2) If a proposed modification does constitute a material change in the nature of the request for proposals,

then the purchasing agency may cancel the request for proposals in accordance with section 3-143-613, and a new request for proposals may be issued.

(e) Material change defined. For purposes of this section, a material change in the nature of a request for proposals is one that would alter a reasonable potential applicant's decision not to submit a proposal.

(f) Confidentiality of proposal contents during discussions. The confidentiality of the contents of individual proposals shall be maintained in accordance with section 3-143-604 during the course of any discussions conducted under this section in order to prevent the disclosure of such contents to competing applicants.

§3-143-402 Submission of questions before submittal deadline. (a) Before the submittal deadline, an applicant may submit questions to a purchasing agency in order to request a written clarification or explanation of any point in a request for proposals.

(b) Procedure for submitting questions. Questions must be submitted to the purchasing agency in writing, and should identify the questioner and clearly reference the request for proposals at issue. To the extent possible, questions should be transmitted to the purchasing agency in a reasonable time before the submittal deadline so that the purchasing agency will have time to consider the questions and distribute answers.

(c) Purchasing agency response. Purchasing agencies shall promptly respond to questions posed under this section either by a written clarification, or by issuing an addendum to the request for proposals as provided under section 3-143-301. Copies of the purchasing agency's responses shall be sent by hand-delivery or telefacsimile, to the extent practicable, or United States mail to the providers who raised the questions. All written clarifications shall be made

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available on a website identified in the request for proposals or at the same location or locations where proposals may be submitted.

§3-143-403 Discussions with applicants after submittal deadline. (a) After the submittal deadline, a purchasing agency may engage in discussions with applicants as provided in this section as often as the purchasing agency deems necessary or convenient.

(b) Allowed purposes for discussion.

Discussions may be held under this section for the purposes of:

- (1) Clarifying elements of the request for proposals or the proposal;
- (2) Facilitating the refinement of proposals to produce the contract that will be most advantageous to the state in light of the evaluation criteria set forth in the request for proposals; or
- (3) Negotiation with providers to arrive at a more advantageous set of proposals for the state to consider.

(c) Procedure for conducting discussions. The purchasing agencies shall establish procedures and schedules for conducting discussions under this section that will insure the reasonably fair and equal treatment of all applicants.

(d) Modification or cancellation of request for proposals for material change. In response to matters raised during discussions conducted under this section, a purchasing agency may modify or cancel its request for proposals as provided herein.

- (1) If a proposed modification does not constitute a material change in the nature of the request for proposals, then the purchasing agency may issue a written addendum in accordance with section 3-143-301.
- (2) If a proposed modification does constitute a material change in the nature of the request for proposals,

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then the purchasing agency may cancel the request for proposals in accordance with section 3-143-613~~(f)~~(f), and a new request for proposals may be issued.

(e) Material change defined. For purposes of this section, a material change in the nature of a request for proposals is one that would alter a reasonable applicant's decision not to have submitted a proposal.

(f) Confidentiality of proposal contents during discussions. The confidentiality of the contents of individual proposals shall be maintained in accordance with section 3-143-604 during the course of any discussions conducted under this section in order to prevent the disclosure of such contents to competing applicants.

§3-143-404 Discussions with applicants after award and before contract execution. (a) After the award of a contract to an applicant, the purchasing agency or a secondary purchaser may have further discussions in accordance with this section in order to negotiate a more advantageous contract for the state.

(b) Scope of discussions. Discussions conducted under this section shall be limited in scope to the following:

- (1) Contractual terms and conditions not specifically addressed in the request for proposals that would not constitute a material change to the proposals; and
- (2) Contractual terms and conditions which are substantially the same or that do not constitute a material change to the proposal.

(c) Material change defined. For purposes of this section a material change to a proposal is one that would adversely affect how advantageously the proposal was rated during the evaluation process.

(d) Procedure for conducting discussions. The purchasing agencies shall establish procedures and

schedules for conducting discussions under this section.

SUBCHAPTER 5

EXPEDITING PROCEDURES

§3-143-501 Pre-registration of licensing and business status for providers. (a) In order to reduce the duplication of efforts that purchasing agencies may face in screening providers to verify that they are in good corporate, partnership, or other business standing, the administrator shall develop a system to allow providers to pre-register the status of their business standing prior to the announcement of requests for proposals.

(b) No preference granted. The establishment of a system for pre-registration shall not be construed as the establishment of a group of preferred providers. Any system for pre-registration established by the administrator shall be used solely to minimize the time necessary to verify the status of providers' standing. No provider that participates in a system for pre-registration shall be granted any preference for participation, including but not limited to the following:

- (1) Distribution of the request for proposals shall not be limited to pre-registered providers;
- (2) Failure to pre-register shall not constitute a basis for the denial of a contract award under this chapter;
- (3) Pre-registration shall not be construed as a determination that a provider is a responsible provider;
- (4) Pre-registration shall not be construed to represent service capability; and
- (5) Pre-registration shall not be construed as acceptability of service delivery.

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(c) Coordination of pre-registration by administrator. The administrator shall coordinate any system of pre-registration to reduce duplication of effort among purchasing agencies and applicants, so that an applicant may submit one complete set of the qualifying information to be utilized by all branches, divisions, offices, or other entities.

(d) Duty to update pre-registration information. Whenever there is a change in a pre-registered applicant or provider's status, it is the duty of the applicant or provider to update documents submitted for pre-registration within fifteen calendar days and submit updated information to the administrator.

§3-143-502 Use of telefacsimile for competitive purchase of service. (a) Proposals and amendments may not be submitted to purchasing agencies by telefacsimile transmission except when such transmission is expressly authorized in a request for proposals.

(b) Applicant bears responsibility for transmission. Applicants who submit proposals or amendments by telefacsimile transmission bear the whole and exclusive responsibility for assuring the complete, legible, and timely transmission of their documents to purchasing agencies. By opting to submit documents by telefacsimile transmission, applicants assume all risk that a purchasing agency's telefacsimile receiver may be inoperative or otherwise unavailable at the time transmission is attempted.

(c) Time of receipt. A proposal or amendment submitted via telefacsimile transmission shall be deemed to have met the submittal deadline when the last page of a complete, legible copy of the document has been received by the purchasing agency by the submittal deadline.

(d) Short-form telefacsimile proposal or amendment. Because of the difficulty of transmitting a complete proposal or amendment via telefacsimile, a short-form proposal or amendment may be authorized in the request for proposals that contains only:

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- (1) Identification of the request for proposals to which the applicant is responding;
- (2) All pages of the submittal requiring a signature;
- (3) The quantities of service, and rates as applicable;
- (4) A budget summary; and
- (5) A signed statement that the applicant agrees to all the terms, conditions, and provisions of the request for proposals.

(e) Requirement of a complete original. A short-form telefacsimile proposal or amendment shall be considered valid only if a complete original copy of a full proposal or amendment consistent with the short-form document is received by the purchasing agency and post-marked by the second working day after the telefacsimile transmission.

§3-143-503 ~~[Use of electronic]~~ Electronic submission of proposals for competitive purchase of service. (a) Proposals and amendments may not be submitted to purchasing agencies by electronic ~~{mail}~~ means, except when such transmission is explicitly authorized in a request for proposals.

(b) Applicant bears responsibility for transmission. Applicants who submit proposals or amendments by electronic ~~{mail}~~ means bear the whole and exclusive responsibility for assuring the complete, correctly-formatted, and timely transmission of their documents to purchasing agencies. By opting to submit documents by electronic ~~{mail,}~~ means, applicants assume all risk that a purchasing agency's computer system may be inoperative or otherwise unavailable at the time transmission is attempted.

(c) Time of receipt. For purposes of the submittal deadline, a proposal or amendment submitted via electronic mail shall be deemed to have been received upon ~~{transmission}~~ actual receipt of a

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correctly-formatted copy of the document by the purchasing agency.

(d) Short-form electronic ~~mail~~ proposal or amendment. Because of the difficulty of transmitting a complete proposal or amendment via electronic mail, a short-form proposal or amendment may be authorized that contains only:

- (1) Identification of the request for proposals to which the applicant is responding;
- (2) All pages of the submittal requiring a signature;
- (3) The quantities of service, and rates as applicable;
- (4) A budget summary; and
- (5) A statement that the applicant agrees to all the terms, conditions, and provisions of the request for proposals.

(e) Requirement of a complete original. A short-form electronic ~~mail~~ proposal or amendment shall be considered valid only if a complete original copy of a full proposal or amendment consistent with the short-form document is received by the purchasing agency and post-marked by the second working day after the electronic mail transmission.

§3-143-504 Submission of proposals on computer diskette. (a) Proposals and amendments may not be submitted to purchasing agencies on computer diskette except when such submission is explicitly authorized in a request for proposals.

(b) Applicant bears responsibility for submission. Applicants who submit proposals or amendments on computer diskette bear the whole and exclusive responsibility for assuring the complete, correctly-formatted, and timely submission of their proposals and amendments to purchasing agencies. By opting to submit documents on computer diskette, applicants assume all risk that a purchasing agency's

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computer system may be unable to read the applicant's diskette.

§3-143-505 Selection of substitute provider after early termination of contract. (a) In the event that a contract for health and human services that was awarded under this chapter is terminated before the expiration date established in the contract, the purchasing agency shall follow the procedures in this section in order to select a substitute provider.

(b) Initiation of new competitive purchase of service. In order to select a substitute provider, a purchasing agency may initiate a new competitive purchase of service procurement by issuing a new request for proposals.

(c) Expedited procedure for selection of substitute provider. If the selection of a substitute provider through the initiation of a new competitive purchase of service procurement is not practicable, then the purchasing agency may consider the unsuccessful proposals and negotiate with the providers who submitted them in order to select an advantageous substitute provider. In the event that none of the unsuccessful proposals and providers are sufficiently advantageous, the purchasing agency may select any provider that will be an advantageous substitute. Any contract awarded to a substitute provider selected under this subsection shall terminate either at the same time that the original contract would have, or at the close of the following fiscal year, which ever occurs sooner.

SUBCHAPTER 6

MISCELLANEOUS PROCEDURES

§3-143-601 Modification or withdrawal of proposals before submittal deadline. Before the submittal deadline, applicants may freely and at any time modify or withdraw their proposals by written

notice referencing the original proposal and either detailing the modification, or stating the intent to withdraw the proposal.

§3-143-602 Proposals deemed firm offers after submittal deadline. After the submittal deadline, all proposals timely received shall be deemed to be firm offers that are binding on the applicants for a period of ninety calendar days. During this period, applicants may neither modify nor withdraw their proposals without written authorization or invitation from the purchasing agency.

§3-143-603 Late proposals rejected. Any proposal, withdrawal, or modification submitted after the submittal deadline is late and shall be rejected on that basis. Notice of the rejection for late submission shall be given to the applicant, and the purchasing agency shall discard the late proposal thirty calendar days after its receipt. Before its disposal, the applicant may retrieve the late proposal from the purchasing agency. [

§3-143-604 Access to documents and confidentiality. After submission to a purchasing agency, the confidentiality of proposals, modifications to proposals, and withdrawals of proposals shall be maintained in accordance with this subsection.

- (1) Prior to the submittal deadline, proposals, modifications to proposals, or withdrawals of proposals shall be kept in confidence in a secure place, and may not be inspected for purposes of evaluation.
- (2) After the submittal deadline, proposals, modifications, and withdrawals may be opened and inspected only by state personnel involved with the procurement process and designated evaluation committee members. After

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the submittal deadline and before the award and execution of a contract, such documents shall be kept confidential in order to avoid disclosure of contents to competing applicants.

- (3) Procurement files shall be open to public inspection as provided in section 3-143-616, after a contract has been awarded and executed by all parties.

§3-143-605 Multiple proposals and alternate proposals. (a) An applicant may not submit multiple proposals or alternate proposals unless a request for proposals specifically authorized multiple proposals or alternate proposals.

(b) Rejection of multiple proposals and alternate proposals. When no specific authorization for multiple proposals or alternate proposals has been given, all such proposals from a single applicant shall be rejected unless one of them has been clearly designated as the primary proposal. In such a case, the designated primary proposal shall be retained and evaluated, and all others shall be rejected.

(c) Treatment of authorized multiple proposals and alternate proposals. Whenever a request for proposals authorizes multiple proposals or alternate proposals, the request for proposals shall also detail the treatment of such proposals for purposes of evaluation and contract award.

§3-143-606 Correction of errors discovered after submittal deadline. (a) Applicants bear the responsibility of verifying that their proposals to purchasing agencies are accurate and free of errors before the submittal deadline. Before the submittal deadline, applicants may freely correct errors or inaccuracies they discover in their proposals in accordance with the procedure provided in section 3-143-601.

(b) Only patent errors correctable. After the submittal deadline only patent errors may be corrected as provided in this section.

(c) Patent error defined. A patent error is an error that would be readily ascertainable by a reasonably knowledgeable person in the field of health and human services. Depending on the circumstances, patent errors may include, but are not limited to arithmetical errors, typographical errors, transposition errors, and omitted signatures.

(d) Required showing for correction of patent error. In order to correct a patent error, an applicant must identify the error in the proposal, and establish the following to the purchasing agency's satisfaction:

- (1) That the error identified is a patent error;
- (2) That the proposed correction constitutes the information intended at the time the proposal was submitted, and not a modification of the proposal based on information received after the submittal deadline; and
- (3) That the proposed correction is not contrary to the best interest of the purchasing agency or to the fair treatment of other applicants.

§3-143-607 Final revised proposals. (a) A purchasing agency may request applicants to submit final revised proposals in order to allow fair and equal opportunity to all applicants to respond to the matters raised at the discussions and make a best and final offer.

(b) Procedure for requesting final revised proposals. To request final revised proposals, a purchasing agency shall issue notice to all applicants that includes the following information:

- (1) A request for final revised proposals;

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- (2) The deadline for submission of final revised proposals;
- (3) The procedure for submitting final revised proposals if that procedure is different from submitting the original proposals;
- (4) Instructions that only the section or sections of each applicant's last proposal that are amended should be submitted in the final revised proposal; and
- (5) A statement that if an applicant does not submit a final revised proposal, then the last proposal submitted by an applicant shall be deemed to be the applicant's final revised proposal.

(c) Procedure for submission. Unless a different method is specified, final revised proposals shall be submitted to purchasing agencies in the manner provided for the original proposals under section 3-143-204.

(d) Award after submission of final revised proposals. After revised final proposals are received, final evaluations will be conducted, and an award or awards made, unless the purchasing agency makes a written determination that it is in the state's best interest to conduct additional discussions or issue a further addendum to the request for proposals.

§3-143-608 Secondary purchase of competitive purchase of service. (a) In order to increase the efficiency of health and human services procurements through better planning, purchasing agencies may coordinate purchases of similar health and human services by combining their requirements as primary and secondary purchases of health and human services as provided herein:

- (1) After-the-fact secondary purchase. A purchasing agency may utilize the service or part of the service that has

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already been procured under a competitive purchase of service by another purchasing agency; or

- (2) Planned secondary purchase. When two or more purchasing agencies require the procurement of substantially the same health and human services, they may combine their requirements and issue a single request for proposals.

(b) Primary purchaser and secondary purchaser defined. When two or more purchasing agencies combine their service requirement as provided in subsection (a), the purchasing agency requiring the largest share of the services detailed in the request for proposals shall be deemed to be the primary purchaser, while the purchasing agency requiring the smaller share shall be deemed the secondary purchaser. A secondary purchaser's share of the total services to be provided in subsection (a)(1) above may not exceed thirty percent[,] or \$75,000, whichever is lesser, unless the head of the secondary purchaser determines in writing that good cause exists for a greater share.

(c) Duties of primary and secondary purchasers. The primary purchaser shall have the responsibility of complying with the procedures and requirements of a competitive purchase of services, and the secondary purchaser shall have a duty to cooperate with the reasonable requests of the primary purchaser. Both the primary purchaser and the secondary purchaser shall execute separate contracts.

(d) Approval to utilize after-the-fact secondary purchase. When a purchasing agency decides to make a secondary purchase as provided in subsection (a)(1), written approval to utilize the primary purchaser's procurement shall be requested by the head of the secondary purchaser or a procurement officer of the secondary purchaser from the chief procurement officer of the primary purchasing agency. The request shall address the following:

- (1) Title and description of the service;
- (2) General information on the contract of the primary purchaser to include name

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- of purchasing agency, contact person, phone number, and contract number;
- (3) Primary purchaser's contract period and secondary purchaser's proposed contract period;
 - (4) Primary and secondary purchasers' contract amounts;
 - (5) A statement that the service or part of the service is the same or substantially the same; and
 - (6) A description of any differences between the primary and secondary purchase, if any.

§3-143-609 Inadequate response to request for proposals. (a) Whenever a request for proposals generates an inadequate response, the purchasing agency that issued the request for proposals may use the simplified procedures in this section to complete the procurement.

(b) Inadequate response defined. An inadequate response to a request for proposals exists when:

- (1) There is only one proposal that is both responsive to the request for proposals and submitted by a responsible provider;
- (2) All proposals that were received are either not responsive to the request for proposals, or were not submitted by responsible providers; or
- (3) There are no responses at all to the request for proposals.

(c) Treatment of a single proposal. When there is only one proposal that is both responsive to the request for proposals and submitted by a responsible provider, the purchasing agency may respond by taking any of the following actions:

- (1) Cost analysis. The purchasing agency may require a cost analysis to validate the proposal's cost factors including cost or pricing data.

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- (2) Award. The purchasing agency may make an award to the single applicant if it is determined that:
 - (A) The proposal submitted is responsive to the request for proposals, and its terms are reasonable and satisfactory to the purchasing agency; and
 - (B) The required twenty-one day period from the initial notice of the request for proposals to the submittal deadline provided other prospective applicants with a reasonable opportunity to respond.
- (3) Rejection. The purchasing agency may reject the proposal and either issue a new request for proposals, or cancel the procurement altogether.
- (4) Direct negotiations. The purchasing agency may negotiate directly with the applicant upon a written determination by the purchasing agency that:
 - (A) The need for the service continues;
 - (B) The single proposal is not satisfactory and reasonable; and
 - (C) There is no time to issue a new request for proposals or re-solicitation would likely be futile.
- (5) Restrictive purchase of services. The purchasing agency may make a restrictive purchase of service by following the procedures established under chapter 3-144.

(d) No useful response to request for proposals.

If no proposals were received that were both responsive to the request for proposals and submitted by a responsible applicant, or if no proposals were received at all, then the purchasing agency may respond by taking any of the following actions:

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- (1) Reissue. The purchasing agency may re-issue the request for proposals.
- (2) Alternate service delivery. The purchasing agency may select an alternate method of service delivery and issue a new request for proposals.
- (3) Cancellation. The purchasing agency may cancel the procurement altogether.
- (4) Selection without competition. The purchasing agency may select a provider without further solicitation upon making a written determination that it is neither practicable nor advantageous to issue a new request for proposals based on a consideration of the following factors:
 - (A) Competition in the marketplace;
 - (B) Whether the additional potential cost of preparing, soliciting, and evaluating competitive purchase of service proposals is expected to exceed the benefits normally associated with the solicitation; and
 - (C) Any other factors that the purchasing agency deems relevant to this determination.
- (5) Restrictive purchase of services. The purchasing agency may make a restrictive purchase of services by following the procedures established under Chapter 3-144.

§3-143-610 Rejection of proposals. (a) In addition to any other basis for mandatory rejection established elsewhere in this chapter, proposals shall be rejected for reasons including, but not limited to:

- (1) Proposal not responsive. Any proposal that is not responsive to the request for proposals because of its failure to conform in all material respects to the

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request for proposals including, but not limited to, the service specifications or other evaluation criteria shall be rejected; or

- (2) Applicant not responsible. Any proposal submitted by an applicant that is found not to be a responsible provider shall be rejected.

(b) Notice of rejection. Whenever an applicant's proposal has been rejected under these rules, notice of the rejection shall be sent to the applicant by United States mail that states the reasons for rejection.

§3-143-611 Modification of proposal by partial rejection. (a) A purchasing agency may, in accordance with this section, partially reject any proposal or combination of proposals that was deemed the most advantageous during the evaluation process in order to request modifications to the proposal that are in the best interests of the state.

(b) Conditions for partial rejection. A purchasing agency may only partially reject any proposal or combination of proposals if the following conditions are met:

- (1) The proposal or combination of proposals has been determined under the evaluation process to be the most advantageous; and
- (2) The modifications proposed by the purchasing agency will not render the proposal or proposals less advantageous.

(c) Procedure and notice for partial rejection. Upon the determination that a proposal is eligible for partial rejection, the purchasing agency shall give the applicant that submitted the proposal notice of partial rejection. The notice of partial rejection shall contain the following information:

- (1) Identification of the proposal; and

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- (2) A statement of the proposed modifications to the proposal.

(d) Partial rejection not binding unless approved. A notice of partial rejection shall not be construed to bind an applicant unless the applicant approves in writing the modifications proposed in the notice. If the modifications as proposed in the notice are not acceptable to the applicant, then the applicant may make a counter-proposal to the purchasing agency and negotiate a set of modifications mutually acceptable to both parties.

(e) Incorporation in proposal. Once proposed modifications are approved by both the purchasing agency and the applicant, they shall be incorporated into the applicant's proposal in a manner mutually acceptable to both parties.

§3-143-612 Disposition of rejected proposals. Whenever a proposal is rejected pursuant to sections 3-141-201 or -202, or sections 3-143-610 or -613, the purchasing agency may discard the rejected proposal thirty calendar days after its rejection. Before disposal, the applicant may retrieve the proposal from the purchasing agency.

§3-143-613 Cancellation of request for proposals.
(a) A request for proposals may be canceled at any time for any of the following reasons:

- (1) The purchasing agency no longer requires the service;
- (2) The purchasing agency no longer can reasonably expect to fund the service;
- (3) Proposed amendments to the request for proposals would be of a magnitude that a new request for proposals is desirable;
- (4) A determination by the chief procurement officer that a cancellation of the request for proposals is in the public interest; or

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- (5) Any other reason determined by the purchasing agency to constitute good cause for the cancellation.

(b) Cancellation between submittal deadline and award. A request for proposals may be canceled after the submittal deadline but before the award of a contract for any of the following reasons:

- (1) Ambiguous or otherwise inadequate service specifications were part of the request for proposals;
- (2) The request for proposals did not provide for consideration of all factors of significance to the purchasing agency;
- (3) No adequately responsive proposals were received;
- (4) There is reason to believe that the proposals submitted to the purchasing agency:
 - (A) May not have been independently arrived at by open competition;
 - (B) May have been collusive; or
 - (C) May have been submitted in bad faith.
- (5) A determination by the chief procurement officer that a cancellation of the request for proposals is in the public interest; or
- (6) Any other reason determined by the purchasing agency to constitute good cause for the cancellation.

(c) Notice of cancellation. A notice of cancellation shall be sent to all applicants or prospective applicants, and shall include the following information:

- (1) Identification of the particular request for proposals;
- (2) A brief explanation of the reason or reasons for cancellation;
- (3) Where appropriate, a statement that an opportunity will be given to compete on

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any resolicitation or any future procurements of similar services; and

- (4) Any other information deemed necessary or advisable by the purchasing agency.

(d) Record of cancellation. A written statement of the reasons for cancellation shall be made a part of the procurement file and shall be available for public inspection.

(e) Proposals deemed rejected upon cancellation. Upon cancellation of a request for proposals, all proposals received from applicants shall be deemed rejected without further action from the purchasing agency.

§3-143-614 No exception from applications for federal funding. (a) Applying for federal funds that may be used when obtained from the federal funding source to provide health and human services shall not exempt a purchasing agency from chapter 103F, HRS, procurement requirements.

(b) Use of competitive purchase of service. When federal funds awarded to the state do not specify any particular provider by federal law or in the federal grant award to the state, competitive purchase of service shall be used unless an alternate method is determined to be more appropriate and advantageous to the state.

(c) Special procedures authorized. In certain circumstances, the usual sequence of the competitive purchase of service process may be modified. To apply for and receive federal funds, it is often required that the state submit an application to the federal funding source describing the use of such funds, and in some cases, identifying a specific provider or providers. To fulfill the procurement requirements, purchasing agencies may utilize a request for information as established in section 3-142-202 prior to applying for or receiving the federal funding. The selected provider or providers may be included in the state's application to the federal funding source provided the purchasing agency completed a request for

information to assess and consider interested or prospective applicants for inclusion in the state's application for federal funding.

(d) Selection of provider for federal application. The selection of a provider or providers for inclusion in the purchasing agency's application for federal funding shall be based on the criteria and requirements established in the request for information, or the discretion of the head of the purchasing agency.

(e) Construction of section. Nothing in this section shall be construed to disqualify a purchasing agency from receiving federal funds.

§3-143-615 Register of proposals. Ten working days, or a reasonable time after the submittal deadline, a register of proposals shall be prepared and made available to the public. The register shall include the following information from each proposal:

- (1) The name of each applicant; and
- (2) The request for proposal service title and identification number to identify the service.

§3-143-616 Public inspection of competitive purchase of service records. (a) The procurement file for every competitive purchase of service procurement shall be available for public inspection after execution of a contract to the extent permitted under current law governing information practices.

(b) Keeping of file and contents. Purchasing agencies shall maintain files for every competitive purchase of service procurement that they conduct. The file shall contain all records that the purchasing agency keeps that are connected to the procurement, award, or servicing of a contract. At a minimum, the records kept in the file shall include but not be limited to the following:

- (1) The register of proposals prepared pursuant to section 3-143-615;

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- (2) A listing of all service providers to whom copies of the request for proposals were distributed;
- (3) Names of successful applicants and dollar amounts requested, as applicable;
- (4) The basis on which the award or awards were made;
- (5) A copy of the request for proposals;
- (6) A copy of the successful proposal or proposals; and
- (7) A copy of the unsuccessful proposal or proposals.

§3-143-617 Requests for information for competitive purchase of service. ~~{(a) A purchasing agency may at any time prepare a request for information in order to facilitate the purchasing agency's planning and development of requests for proposals. A request for information may be written, oral, or issued through electronic media or any combination of these methods, and may be sent to any knowledgeable person or entity that the purchasing agency deems advisable.~~

~~—— (b) Permissible subjects. A request for information may address any subject relevant to a planned or proposed request for proposals, including but not limited to the following:~~

- ~~(1) The objective of the procurement;~~
- ~~(2) The target population or clients to be served;~~
- ~~(3) The services the purchasing agency anticipates may be necessary to achieve the outcome or objective; or~~
- ~~(4) Service specifications, feasibility, viability, or cost.~~

~~—— (c) Form of request. In addition to a description of the information being sought, and the procedure for responding, a request for information shall include:~~

- ~~(1) A statement that participation is optional and is not required to respond to a subsequent request for proposals;~~
- ~~(2) A statement that the purchasing agency reserves the right to incorporate or not incorporate any recommendations presented in the response to the request for information in a request for proposal; and~~
- ~~(3) A statement that neither the purchasing agency nor the interested party responding has any obligation under the request for information.}~~

Requests for information shall be made in accordance with sections 3-142-202 prior to the release of a request for proposals.

§3-143-618 Collaboration of providers. (a) Purchasing agencies may ask providers to participate in agency planning activities in order to create greater efficiency, responsiveness, and organization in meeting the health and human service needs of various communities.

(b) Areas for collaboration. Specific areas for collaboration with providers include, but are not limited to:

- (1) Sharing of information on community needs;
- (2) Determination of best practices;
- (3) Inventory of available resources;
- (4) Budgetary or cost factors;
- (5) Configuration of services; and
- (6) Recommendations for service specifications and requirements.

(c) No disqualification from procurement. Provider participation is encouraged, and such involvement shall not disqualify any responsible provider from subsequent or simultaneous participation in purchasing agency procurement of health and human services.

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(d) No exemption from anti-competitive practices. The collaborative practices permitted under this section shall not be construed to create an exemption to allow anti-competitive practices otherwise prohibited by federal, state, or county law.

§3-143-619 Joint requests for proposals Two or more purchasing agencies may issue a joint request for proposals for the purposes of coordinating and improving the efficiency of purchasing health and human services. (a) A joint request for proposals may be issued when two or more purchasing agencies purchase services that:

- (1) are substantially the same or,
- (2) purchasing a continuum of services for clients from the same provider or collaboration of providers is essential for the continuity of service.

(b) In addition to the information required by sections 3-143-201 and 3-143-302 the joint request for proposals shall include:

- (1) A statement that the request for proposals is being issued jointly and the name of the purchasing agencies;
- (2) The purpose and goals of issuing the joint request for proposals;
- (3) The role each state agency will play in evaluating proposals;
- (4) The manner in which contracts will be awarded and executed.

~~§3-143-619~~ §3-143-620 Competitive purchase of service record of procurement actions. (a) The procurement officer of the purchasing agency shall maintain records by fiscal year of all competitive purchase of service procurements made for a minimum of the past five fiscal years.

(b) Annual reports of competitive purchase procurements. By the fifteenth day of August of each year, the heads of purchasing agencies shall make reports to the administrator of all competitive

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purchase of service procurements made by their respective agencies for the immediately preceding fiscal year. The report shall be made in the format prescribed by the administrator.

(c) Annual consolidated reports. By the first day of October of each year, the administrator shall make a consolidated report of all competitive purchase of service procurements made during the immediately preceding fiscal year. A copy of this report shall also be sent to the procurement policy board.